IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION N0.8415 OF 2005

Shri Rohit Premji Veera .. ..Petitioner

Versus

Anant Ganesh Petkar & ors. .. ..Respondents

Mr.Amit Borkar for petitioner

Mr.S.M.Kamble for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 18TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties. Respondent - Anant G. Petkar is present in the Court.

2. Rule, rule made returnable forthwith by consent.

3. This Writ Petition is filed against the order

passed by 2nd Joint Civil Judge, Junior Division, Kolhapur dated 14th October, 2005 rejecting application of the petitioner vide Exh.-C bringing the facts to the notice of the court that the plaintiff-respondent had filed the suit under the provisions of the Transfer of Property Act as well as Bombay Rent Act and therefore, it was necessary for the plaintiff to elect as to under what provision of law he intended to proceed. Obviously due to the reason that the parameters of the law applicable to the set of facts under the said two laws were different in nature and therefore, the effective adjudication would not be possible unless the plaintiff elected to proceed under the provisions of one law or the other.

. It appears from the record that the plaintiff filed his say and denied the application submitting that there was no need to plea to elect the law.

4. The learned trial judge proceeded to adjudicate the application holding that there was no procedure to elect the provisions or principles of law and therefore, did not necessary to elect the provisions of law, and therefore, in effect the order passed was to the extent that the plaintiff was allowed to proceed keeping open

both the options that is the provisions under the Transfer of Property Act as well as Bombay Rent Act.

5. In my considered view, such view is nothing less than perverse and totally contrary to the law. In view of this position, I was inclined to remand the matter with certain directions, however, the learned counsel for the respondent-plaintiff submitted that he would make an application to the lower court specifically for electing choice of forum either under the provisions of Transfer of Property Act or Bombay Rent Act. In view of this statement, in presence of his client, I am inclined to dispose of the Writ Petition.

6. Hence, it is directed that the plaintiff-respondent shall make an application to the lower court within four weeks from the date of this order electing the forum which he chooses to proceed with in the said suit for which purpose, if required, he has liberty to make an amendment in the plaint and the lower court shall consider that amendment application accordingly.

7. With this direction the order passed by the lower court dated 14th October, 2005 is hereby set aside and the

Rule is made absolute. The petition stands disposed of with the said direction with no order as to costs.

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